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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,101	05/04/2001	Michael A. Fischer	INSL0036	7967
7590	09/17/2004		EXAMINER	
Gary Stanford 610 West Lynn Austin, TX 78703				WILSON, ROBERT W
		ART UNIT	PAPER NUMBER	2661

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/849,101	FISCHER ET AL.	
	<b>Examiner</b> Robert W Wilson	<b>Art Unit</b> 2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 04 May 2001.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-44 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 25-32 and 34-44 is/are allowed.

6)  Claim(s) 17-22 is/are rejected.

7)  Claim(s) 1-24 and 33 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 04 May 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/16/03 & 2/19/03

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

**1.0** The application of Fischer et. al. entitled SYSTEM AND METHOD FOR PROVIDING A SELECTABLE RETRY STRATEGY FOR FRAME-BASED COMMUNICATIONS which requests priority benefit based upon 60/261,436 dated 1/11/01 was examined. Claims 1-44 are pending. The applicant should note that a number of IDS documents were not included with the case consequently the examiner did not sign off on the review of these documents. The examiner recommends that applicant submit or resubmit these documents if they desire them to be considered. Refer to the IDS submitted with this action for further details.

### ***Claim Rejections - 35 USC § 103***

**2.0** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3.0** **Claims 17-22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchholz et. al. (U.S. Patent No.: 5,440,545).

Referring to Claim 17, Buchholz teaches: A method of improving usage of a wireless medium (The applicant only defines “method of improving” in the preamble but does not further define “method of improving” in the claim limitations consequently the examiner has treated “method of improving” as an intend use and given it no weight. Control header with RETRY COUNT and ACK SCHEDULE per Fig 10 in a wireless medium per Fig 1A or method in a wireless medium)

Applying, by a first transceiver system, a no retry strategy to a first frame so that retransmission of the first frame will not be attempted (One of the 94s per Fig 1A or first transceiver system which sets RETRY COUNT to zero and ACK SCHEDULE to zero per Fig 10)

Programming, by the first transceiver system, the first frame with an indication that acknowledgement is not requested (One of the 94s per Fig 1A or first transceiver system which sets ACK SCHEDULE to zero per Fig 10)

Successfully receiving, by a second transceiver system the first frame via the wireless medium (Another of the 94s per Fig 1A or second transceiver system receives the frame shown in Fig 10)

Detecting by the second transceiver system, the no acknowledgement indication (Another of the 94s per Fig 1A or second transceiver system receives the frame shown in Fig 10 with ACK SCHEDULE set to zero)

Suppressing sending, by the second transceiver system, an acknowledgement frame in response to receiving the first frame (Another of the 94s per Fig 1A or second transceiver system receives the frame shown in Fig 10 with ACK SCHEDULE set to zero and therefore does not send a ACK back to the sending 94 per Fig 1)

Buchholz does not expressly call for: setting RETRY COUNT and ACK SCHEDULE to zero but defines a field in a control word for sending RETRY COUNT and ACK SCHEDULE per Fig 10.

It would have been obvious to one of ordinary skill in the art at the time of the invention set RETRY COUNT and ACK SCHEDULE to zero in order to broadcast a message to a another transceiver.

**In Addition Buchholz teaches:**

Regarding **Claim 18**, wherein said applying a no retry strategy comprises programming a retry strategy field associated with the first frame with a no retry indication (The applicant broadly claims “no retry strategy”. The examiner has interprets “no retry strategy” as setting RETRY COUNT to zero per Fig 10)

Regarding **Claim 19**, wherein said programming a retry strategy field comprises programming a frame descriptor of the first frame (setting RETRY COUNT to a value per Fig 10 or strategy)

Regarding **Claim 20**, wherein said programming comprises programming at least one bit of a field of the first frame (The examiner interprets setting a RETRY COUNT value per Fig 10 as setting or programming a first frame)

Regarding **Claim 21**, wherein said programming comprises programming at least one bit of a duration/ID field of the first frame (The examiner takes official notice that sending a duration/ID field in the first frame is well known in the art per Part 11: Wireless LAN Medium Access CONTROL (MAC) and Physical Layer (PHY) specifications dated 26 June 1997 per Pg 44 Figure 22. It would have been obvious to one of ordinary skill in the art at the time of the invention to define or program duration/ID in the first frame in order to be standards compliant)

Regarding **Claim 22**, wherein said programming comprises programming at least one bit of a Quality of Service control field of the first frame (The applicant broadly claims “Quality of Service control field”. The examiner interprets setting a RETRY COUNT per Fig 10 as a “Quality of Service control field”).

### ***Claim Objections***

**4.0** **Claim 23 & 24** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims (**As well as resolving any examiner’s objection to the independent claim and dependent claims respectively**).

The closest prior art U.S. Patent No.: 5,440,545 and Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) combined teach sending a first message with a duration/ID field but fail to teach sending a second frame with an expiration time; consequently, claims 23 and 24 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims (**As well as resolving any examiner’s objection to the independent claim and dependent claims respectively**).

### ***Claim Objections***

**5.0** **Claims 1-24 & 33** are objected to because of the following informalities:

Referring to **Claims 1-2, 4-5, 8-10, 12-13, & 17-22**, The examiner objects to the applicant’s usage of the word “programming” in the claim limitations because it could be construed as software. “Programming” or software is a non-statutory 101 rejection. The examiner suggests changing “programming” to “selecting”.

Referring to **Claims 9,21, & 33**, The examiner objects to the applicant’s usage of the word “programmed” in the claim limitation because it could be construed as software. “Programmed” or software is a non-statutory 101 rejection. The examiner suggests changing “programmed” to “selected”.

Referring to **Claims 9,21, & 33**, The examiner objects to the usage of “duration/ID” in the claim. Does the applicant mean “duration and ID” or “duration or ID” or “duration ID”. The examiner suggest changing “duration/ID” to “duration ID”. Appropriate correction is required.

***Allowable Subject Matter***

**6.0** The invention is directed to a communication system which has a controller and transceiver. The controller sends a frame to the transceiver with a no retry field and a retry count field. The transceiver does not attempt to retransmit the frame upon receipt of the separate field containing a non retry count field.

The closest prior art is Diepstraten et. al. (U.S. Patent No.: 5,422,877), Part 11:Wireless LAN medium access Control (MAC) and Physical Layer (PHY) specification, and Buchholz et. al. (U.S. Patent No.: 5,440,545).

Diepstraten et. al (U.S. Patent No.: 5,422,877) teaches a controller and transceiver in which retransmission occurs until a maximum number of attempts or retries but fails to teach a separate field in a frame which is a non retry field.

Part 11:Wireless LAN medium access Control (MAC) and Physical Layer (PHY) specification teaches a RETRY field but fails to teach a separate field in a frame which is a non retry field.

Buchholz et. al. (U.S. Patent No.: 5,440,545) teaches a RETRY COUNT but fails to teach a separate field in a frame which is a non retry field.

The closest prior art Diepstraten et. al. (U.S. Patent No.: 5,422,877), Part 11:Wireless LAN medium access Control (MAC) and Physical Layer (PHY) specification, and Buchholz et. al. (U.S. Patent No.: 5,440,545) do not disclose or anticipate either singularly or in combination the following claim limitation:

“attempts retransmission of the frame up to as many times indicated by the retry count if the retry value indicates the retry count, and does not attempt retransmission of the frame if the retry value indicates no retry” as claimed in Claim 25.

**In Addition:**

**Claims 26-32 & 34-44** are allowed because they depend upon **Claim 25**.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W Wilson whose telephone number is 571/272-3075. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on 571/272-3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert W Wilson  
Examiner  
Art Unit 2661



KENNETH VANDERPUYE  
PRIMARY EXAMINER

RWW  
September 10, 2004